



ATTORNEY DOCKET NO. 5649-1114

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Horii Hideki

Confirmation No.: 4471

Serial No. 10/617,958

Group Art Unit: 2655

Filed: July 11, 2003

For: **PHASE CHANGEABLE MEMORY DEVICES HAVING REDUCED
CELL AREAS AND METHODS OF FABRICATING THE SAME**

Date: October 28, 2003

Office of Patent Legal Administration
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO ACCORD THE PROPER FILING DATE

Sir:

As set forth in 37 CFR § 1.10(c) and MPEP § 506.02, Applicant hereby petitions to grant the proper filing date of July 11, 2003 rather than July 14, 2003 for the above-identified patent application as this was the date the application was deposited as "Express Mail" in the U.S. Postal Service. The following is enclosed as evidence of July 11, 2003 being the correct filing date for the application which was properly filed under 37 C.F.R. § 1.10:

1. A true and accurate copy of the Cover Sheet for the Application showing the Express Mail signature and date on Page 2;
2. A true and accurate copy of the Express Mail Pickup Service Statement dated July 11, 2003;
3. A true and accurate copy of the Track & Confirm from the United States Postal Service website (www.usps.com) indicating receipt of the Express Mail package at the Post Office on July 11, 2003 and delivery of the package at the USPTO on July 14, 2003; and
4. A true and accurate copy of our return post card and of the official filing receipt for this application, sent by the United States Patent and Trademark Office, showing that Applicant was improperly given the filing date of July 14, 2003 instead of the Express Mail date of July 11, 2003;

In re: Horii Hideki
Serial No. 10/617,958
Filed: July 11, 2003
Page 2 of 2

This petition is being filed promptly after Applicant became aware of the improperly accorded filing date. Accordingly, Applicant respectfully requests the granting of July 11, 2003 as the filing date pursuant to 37 CFR § 1.10.

On the basis that Applicant properly followed the requirements of 37 CFR § 1.10 and the USPTO failed to accord the proper filing date under MPEP § 505 and thus the need to file this petition is due to error on the part of the USPTO, it is applicant's belief that no fee is due with this petition. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,



Elizabeth A. Stanek
Attorney For Applicant
Registration No. 48,568

USPTO Customer No. 20792
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401

Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 28, 2003.


Rosa Lee Brinson